On the other hand, there is equally strong authority for the view that § 67(f) annuls all liens obtained while the above four requisites are present; and hence it is immaterial whether the property to which such a lien attaches is exempt or not.[7]

This would seem to be the correct view, as it proceeds upon the theory that the general purpose of the Act of 1898 was, not only to secure a benefit to the creditors, but also to give a benefit to the debtor by discharging him from his liabilities and enabling him to start afresh with the property set apart to him as exempt.[8]

These authorities take the view that the clause, "pass to the trustee as a part of the estate of the bankrupt," does not necessarily mean that the title to such property must pass to the trustee, but that the property shall come into the mere possession of the trustee for the purposes of the bankruptcy statute.[9] Exempt property comes into the hands of the trustee to enable him to value and set off to the bankrupt his exemption.[10]

This is sufficient to give the bankruptcy court jurisdiction over the property; and as liens might interfere with the trustee's duties in this respect, all liens obtained under the circumstances stated, are annulled for all purposes.[11] According to this view, § 70 has nothing to do with the question whether a lien on exempt property is annulled or not, since no title to the exempt property need pass to the trustee in order to bring it within the purview of § 67(f).[12]

This later view was sustained by the Supreme Court of the United States in the recent case of *Chicago, etc., Ry. Co.* v. *Hall.*[13]

CONTRACT OF CORPORATION WITH ITS OWN DIRECTOR.—As to the validity of a contract between a private corporation and one of its directors, there appears to be much difference of opinion. Three distinct views have been advanced:

I. According to one view the directors, by the mere fact of being directors, are not disqualified from entering into contracts with the corporation, provided there are enough directors on the other side of the contract (representing the corporation), to make a quorum, and further provided that the contract is fair, open and honest.[1]

---

claim had not been reduced to an *in rem* right, the bankruptcy court had no jurisdiction to allow the waiver and distribute the assets for the benefit of the creditors; but the court did not decide that the bankruptcy court had no jurisdiction over such property for any purpose.

[7] Re Tune, 115 Fed. 906; Re Forbes, 108 C. C. A. 191, 186 Fed. 79; COLLIER ON BANKRUPTCY, 9 ed., 205; Chicago, etc., Ry. Co. *v.* Hall, 33 Sup. Ct. 885.

[8] Re Tune, *supra;* Chicago, etc., Ry. Co. *v.* Hall, *supra.*

[9] Re Tune, *supra;* Re Forbes, *supra;* Chicago, etc., Ry. Co. *v.* Hall, *supra.*

[10] Bankr. Act, § 47(11).

[11] Re Tune, *supra;* Chicago, etc., Ry. Co. *v.* Hall, *supra.*

[12] Re Tune, *supra;* Chicago, etc., Ry. Co. *v.* Hall, *supra.*

[13] 33 Sup. Ct. 885.

[1] Porter *v.* Lassen County Land Co., 127 Cal. 261, 59 Pac. 563.

Such contracts, whenever they come up for review, are carefully scrutinized by the courts, and indeed it may be said that they are regarded with suspicion, but are generally held valid of themselves, the essential feature of the inquiry going wholly to the question of good faith.[2] The director so interested *quoad* the contract itself ceases to be a director and becomes a stranger to the transaction.[3] In consequence, no contract made by a bare quorum which includes the director so interested can be upheld, because the quorum is automatically broken by the disability of the director to vote on matters in which he has a personal interest.[4] Still, even where the contract is executed by a true quorum the burden of proof is upon the interested director to show the open and fair nature of the transaction.[5]

II. The second view is that a director cannot enter into contractual relations with his corporation, any more than he can have any pecuniary interest in a contract between his corporation and a third party, and that any such pretended contract is void *ab initio* for illegality. This view is not upheld by the authorities. In some cases there was actual fraud on the part of the majority of the directorate in making the contract in which some of the directors (not counted in the quorum) were interested.[6] In others there was no disinterested quorum.[7] In still others actual fraud, or at least strong suspicion of fraud on the part of the interested director, caused the court to refuse to uphold the contract.[8] In the case of *Twin Lick Oil Co.* v. *Marbury*,[9] the Supreme Court of the United States expressly repudiates this view.

III. The third, and it would seem the true, as well as the most generally accepted rule, is that such contracts may be made by a corporation, with one or more of its directors, or with a corporation or firm in which such director is interested, provided that it is done openly, by a quorum of disinterested directors, and with the express or implied assent of the stockholders. If this assent be withheld the contract is voidable within a reasonable time by the *cestuis que trustent*.[10] Such assent may be by formal ratification, or may be

---

[2] Twin Lick Oil Co. *v.* Marbury, 91 U. S. 587; Barr *v.* Plate Glass Co., 57 Fed. 86, 6 C. C. A. 260, 17 U. S. App. 124; Smith *v.* Skeary, 47 Conn. 47; Louisa County National Bank *v.* Traer (Ia.), 16 N. W. 120.

[3] Stratton *v.* Allen, 16 N. J. Eq. (1 C. E. Green.) 229.

[4] Bennett *v.* St. Louis Car Roofing Co., 19 Mo. App. 349; Butts *v.* Wood, 37 N. Y. 317.

[5] Pitman *v.* Chicago Lead Co., 93 Mo. App. 592, 67 S. W. 946; Ryan *v.* Williams, 100 Fed. 172.

[6] Thomas *v.* Brownsville & Ft. K. Ry., 2 Fed. 877.

[7] Smith *v.* Los Angeles, etc., Ass'n, 78 Cal. 289, 20 Pac. 677.

[8] Haywood *v.* Lincoln Lumber Co., 64 Wis. 639, 26 N. W. 184; Flint & Pere Marquette Ry. Co. *v.* Dewey, 14 Mich. 477.

[9] *Supra.*

[10] Stewart *v.* Lehigh Valley Ry. Co., 38 N. J. Law (9 Vroom) 505; Griffith *v.* Blackwater Boom & Lumber Co., 46 W. Va. 56, 33 S. E. 125; Jesup *v.* Ry. Co., 43 Fed. 483.

implied from long acquiescence therein by the stockholders.[11] After ratification of, or long continued acquiescence in, the contract by the stockholders, it becomes binding and cannot thereafter be avoided.[12] If the directors or other interested officers own a majority of the stock, mere ratification by the majority is not sufficient, and the transaction may be reviewed in equity, at the instance of the minority.[13] If the contract is partly performed and then avoided by the *cestuis que trustent,* the director is allowed to recover for the reasonable value of his services, etc., under the contract, provided he has acted in good faith throughout.[14] But the burden of ascertaining and of proving the amount reasonably due is on the director himself.[15]

PARTNERSHIP REALTY—CONVERSION.—Upon the dissolution of a partnership, the question generally arises as to the extent of application of the equitable doctrine that real estate purchased with partnership funds for partnership purposes is converted into personalty.

In England, after much conflict of authority, it has become settled that realty acquired with partnership funds for partnership purposes is converted into personalty, not only for all purposes properly connected with the settlement of partnership affairs, and for the settlement of claims between the partners (including the representative of a deceased partner), but also as between the heirs of a deceased partner and his personal representative.[1] And to save further doubt, this doctrine is now declared by statute.[2] This result was reached by considering all partnerships launched with the implied agreement that upon dissolution all its property should be sold.[3]

In this country, the English doctrine has been followed by the State of Virginia.[4] In all other States, however, the courts have adopted a rule which considerably modifies the English doctrine, upon the reasoning that the presumed agreement of the partners is that the realty is to be sold only so far as is necessary for firm

---

[11] Warren *v.* Para Rubber Shoe Co., 166 Mass. 97, 44 N. E. 112; Hodge *v.* U. S. Steel Corporation, 64 N. J. Eq. 807, 54 Atl. 1.

[12] Battele *v.* Northwestern Cement & Paving Co., 37 Minn. 89, 33 N. W. 327; Gorder *v.* Plattsmouth Canning Co., 36 Neb. 548, 54 N. W. 830.

[13] Booth *v.* Land, etc., Imp. Co., 68 N. J. Eq. 536, 59 Atl. 767.

[14] Griffith *v.* Blackwater Boom & Lumber Co., *supra.*

[15] Booth *v.* Land, etc., Imp. Co., *supra.*

[1] Darby *v.* Darby, 3 Drew 495, 25 L. J. Ch. 211, 61 Eng. Reprint 992.

[2] Eng. Par. Act, 1890, 53 & 54 Vict., ch. 39.

[3] Darby *v.* Darby, *supra.*

[4] Pierce *v.* Trigg, 10 Leigh (Va.) 406; Deering *v.* Kerfoot, 89 Va. 491. See 4 VA. LAW REG. 310. There is dictum in Mann *v.* Paddock, 108 Va. 827, to the effect that the rule in Virginia is yet unsettled, so that the courts may be at liberty ultimately to adopt the rule which generally prevails in the United States.